

9262

AGREEMENT

Made this 20th day of February 2001, by and between MARY A. TOUHEY T/A PASSPORT RESTAURANT (the "applicant") and ADVISORY NEIGHBORHOOD COMMISSION 3F, North Cleveland Park and Forest Hills (the "ANC" or "ANC 3F").

WITNESSETH:

WHEREAS, pending before the District of Columbia Alcoholic Beverage Control ("ABC") Board is Applicant's application for a Retailer's Class "CR" liquor license for the premises known as 4201 Connecticut Avenue, N.W., Application Number 9262; and

WHEREAS, both Applicant and the ANC (the "parties") desire to enter into an agreement commemorating certain understandings regarding Applicant's operating plans;

NOW, THEREFORE, in consideration of the premises recited, and the mutual covenants and promises set forth below, the parties agree as follows:

1. Applicant shall operate a bona fide restaurant on its premises.
2. The restaurant shall have a maximum of 100 seats inside for the exclusive use of dining patrons, and, subject to all government licensing requirements, may have a "garden cafe" on the roof of the garage with a maximum of 30 seats outside for the exclusive use of dining patrons. Alcoholic beverages will be served primarily in conjunction with full meal service.
3. The bar/lounge shall have a maximum of 30 seats for the primary use of patrons waiting for dining service, patrons waiting to be joined by other patrons and patrons waiting for carryout food service.
4. Applicant's hours of operation will be 8:00 a.m. to 11:30 p.m., Sunday through Thursday, and 8:00 a.m. to 1:00 a.m., Friday and Saturday. Until such time as it is fully enclosed, the "garden cafe's" hours all week shall be from 10:00 a.m. to 10:00 p.m., provided, however, that in recognition of the fact that the garden cafe is in close proximity to a residential apartment complex, the applicant agrees that it will not allow any of its patrons to engage in excessively noisy behavior. If the ANC receives any complaints from an individual neighbor or neighbors to noise emanating from the "garden cafe," the applicant agrees to attend the next ANC meeting with a plan of action to reduce the noise level; if the applicant fails to reduce its noise level and fails to appear at the next ANC meeting following notification, then, beginning on the date after such ANC meeting, the "garden cafe" shall only be open during daylight hours until such time as the ANC is satisfied that the Applicant is able to control the noise level emanating from the "garden cafe" or the "garden cafe" is fully enclosed.
5. Applicant shall offer food service to its patrons at all times it is open. At no time shall a patron be able to purchase an alcoholic beverage from the Applicant and not be able to purchase food from the Applicant. Applicant will not provide take-out alcoholic beverages.

6. Applicant shall be permitted to present a guitar player and/or jukebox music inside the restaurant as soft background music for dining; provided, however, that no doors to the exterior of the restaurant shall be propped open at any time when music is being played in the restaurant. Applicant shall have no music on the "garden cafe".
7. Applicant shall not install or utilize any equipment for the showing of videos or video games.
8. Applicant shall be prohibited from displaying any advertising banners, neon signs, or outside signage other than the sign permitted by zoning above its establishment.
9. Applicant shall comply with all aspects of the Civil Infractions Act and the Litter Control Administration Act. Applicant shall ensure that its trash is removed in a timely manner. Applicant shall ensure that its trash receptacle remain closed and free of vermin at all times. In deference to the residential community, Applicant will endeavor to limit noise after closing when disposing of trash and bottles in the receptacles in the alley.
10. Applicant is aware that the alleyway behind its establishment is a narrow alleyway that is shared with other businesses and an apartment community. Applicant shall instruct all of its venders, and shall itself remain vigilant to ensure that delivery trucks shall not block any access to any other loading dock, driveway or entrance.
11. Applicant shall not allow any deliveries to be made at any time before 8:00 am., Monday through Friday, nor prior to 9:00 a.m. Saturday and Sunday. Applicant shall instruct its venders that they cannot park on Van Ness Street and that their delivery personnel are prohibited from using their horn to announce their presence or arrival.
12. Applicant shall maintain its ventilating system in proper working order at all times and shall immediately address any neighborhood concerns regarding odors.
13. Applicant shall comply with §5(d)(3) of the D.C. Noise Control Act as it applies to businesses next to residential neighborhoods and ensure that noise from all mechanical equipment (air-conditioning, refrigerator, heat pump, fan, or other mechanical equipment regardless of location) shall be prohibited in excess of sixty (60) dB (A) when measured at the property line or as close to the property line as practical if there is an obstruction.
14. Applicant will explore and, if necessary, provide professional valet parking services for its patrons between the hours of 5:30 p.m. through closing so patrons do not occupy spaces on the residentially-zoned streets.
15. An ABC licensed manager, conversant with all aspects of this agreement, shall be on site at Applicant's premises during all hours of operation.
16. Any and all contemplated changes to Applicant's operation, as set forth herein or otherwise, will be brought to the attention of the ANC prior to implementation, and only after ANC and, when required by rules and regulations, ABC Board approval.
17. In consideration or, and in reliance upon, the commitments reflected in paragraphs 1 through 16 above, the ANC will advise the ABC Board that it does not oppose Applicant's pending application for a Retailer's Class "CR" license.

Mary A. Touhey t/a Passport Restaurant

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18. The parties further agree that any failure of Applicant to adhere to the foregoing commitments will constitute grounds for the ANC to petition the ABC Board for issuance of an order to show cause to gain the Applicant's compliance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties have affixed hereunto their hands and seals on the year and day first above written.

APPLICANT, MARY A. TOUHEY
T/A PASSPORT RESTAURANT

By: Marya Touhey

(Signature)

Name: Marya Touhey

(Print)

Title: Owner

ADVISORY NEIGHBORHOOD
COMMISSION 3F

By: David J. Bardin

(Signature)

Name: David J. Bardin

(Print)

Title: Chair

Keep 9262 DRH: HBC rec'd. 3/4/98
**ANC 3F RESOLUTION ON APPLICATION NUMBER 9262
VAN NESS STATION, INC. T/A VAN NESS STATION
RETAILER'S CLASS "CR"
4201 CONNECTICUT AVENUE, N.W.**

Oh 8/26/98
WHEREAS, Van Ness Station, Inc., t/a Van Ness Station, 4201
Connecticut Avenue, N.W. has made application to the D.C. Alcoholic Beverage
Control Board under the Alcoholic Beverage Control Act for a Retailer's Class
"CR" license;

WHEREAS, the Alcoholic Beverage Division has opened Docket No. 9262
to consider this request; and

WHEREAS, the ANC has contacted neighbors in the area surrounding the
proposed license and had placed discussion of this application on the agenda for
the public meeting of ANC 3F on February 23, 1998; and

WHEREAS, in the past there have been numerous complaints by
neighbors and members of the community about restaurants and bars operating
in the same location, albeit under different ownership; and

WHEREAS, among other things, the issue of hours of operation of the
restaurant, time and place of deliveries to the restaurant, time and frequency of
removal from the restaurant, parking of the restaurant's patrons and employees,
entertainment to be offered to patrons by the restaurant and other matters of
concern to the community were discussed in detail; and

WHEREAS, the issue of Van Ness Station, Inc. entering into a Voluntary
Agreement with ANC 3F, which Voluntary Agreement encompasses certain
issues that affect the community, having been discussed with Van Ness Station,

Inc., and Van Ness Station, Inc. having acknowledged its understanding of the binding effect and enforceability of such Voluntary Agreement and

WHEREAS, after public discussion at the February 23rd, 1998 between ANC 3F, Derek Colbert, owner of Van Ness Station, Inc. and members of the public.

NOW THEREFORE, IN CONSIDERATION OF VAN NESS STATION, INC. AND ANC 3F entering into and executing a certain Voluntary Agreement in substantially the form and content as the sample Voluntary Agreement attached hereto as Exhibit "A" and incorporated herein by this reference, BE IT RESOLVED THAT ANC 3F

Does not oppose the granting of a license to VAN NESS STATION, INC. by the Alcoholic Beverage Control contingent upon Van Ness Station, Inc. executing the said Voluntary Agreement on or before February 27, 1998, and

FURTHER, BE IT RESOLVED, that the attached Voluntary Agreement entered into between Van Ness Station, Inc. and ANC 3F on or before February 27, 1998, be a part of issuance of the license for Van Ness Station, Inc., and will remain in full force for the period of the license.

This Resolution was seconded by Commissioner Martha Saccoccio and passed by ANC 3F with a vote of 5-0-1.

Dated: February 23, 1998

AGREEMENT

Made this 27 day of Feb., 1998, by and between VAN NESS STATION, INC. t/a VAN NESS STATION (the "Applicant") and ADVISORY NEIGHBORHOOD COMMISSION 3F for North Cleveland Park and Forest Hills (the "ANC" or "ANC 3F").

WITNESSETH:

WHEREAS, pending before the District of Columbia Alcoholic Beverage Control ("ABC") Board is Applicant's application for a Retailer's Class "CR" liquor license for the premises known as 4201 Connecticut Avenue, N.W., Application Number 9262; and

WHEREAS, both Applicant and the ANC (the "parties") desire to enter into an agreement commemorating certain understandings regarding Applicant's operating plans;

NOW THEREFORE, in consideration of the premises recited, and the mutual covenants and promises set forth below, the parties agree as follows:

1. Applicant shall operate a bona fide restaurant on its premises.
2. The restaurant currently has 124 seats inside, and, subject to all government licensing requirements, may have a "garden cafe" with a maximum of 30 seats outside, for the exclusive use of dining patrons. At no time will the total number of seats, with the garden cafe, exceed 154 seats. Alcoholic beverages will be served primarily in conjunction with full meal service.
3. The bar/lounge will have a maximum of 35 seats for the primary use of patrons waiting for dining service.

4. Applicant's hours of operation will be 11:00 a.m. to 12:00 a.m. Sundays through Thursdays; and 11:00 a.m. to 2:00 a.m. Fridays and Saturdays; except that Applicant may stay open until 4:00 a.m. on New Year's Eve ; The garden café's hours shall be from 11:00 a.m. to 10:30 p.m. Sunday through Thursday and from 11:00 a.m. through 11:30 p.m. Friday and Saturday; provided, however, that, in recognition of the fact that the garden café is in close proximity to a residential apartment complex, the Applicant agrees that it will monitor the noise level emanating from the garden café and will not allow any of its patrons to engage in excessively noisy behavior; and provided, further, that if the ANC receives any complaints from any individual neighbor or neighbors, the Applicant agrees that it will close its garden café no later than 10:00 p.m. Sunday to Thursday, and at 11:00 p.m. Friday and Saturday until the next ANC meeting following notification of such complaint, and the Applicant agrees to attend the next ANC meeting to address the complainant and the ANC with it's a plan of action to reduce the noise level; if the Applicant fails to reduce its hours and appear at the next ANC meeting, then, beginning on the date after such ANC meeting, the garden café shall only be open during daylight hours until such time as the ANC is satisfied that the Applicant is able to control the noise level emanating from the garden café.

5. Applicant shall offer food service to its patrons at all times it is open. At no time shall a patron be able to purchase an alcoholic beverage from the Applicant and not be able to purchase a food item from the Applicant.

6. Applicant shall provide professional valet parking services for its

patrons between the hours of 5:30 p.m. through closing.

7. Applicant shall be permitted to present live entertainment and/or recorded music inside the restaurant; provided, however, that no doors to the exterior of the restaurant shall be propped open at any time when music is being played in the restaurant. Applicant shall have no music on the "garden cafe." If Applicant receives any complaints from any neighbor with respect to noise coming from the restaurant, Applicant shall immediately lower the volume of any music. If any neighbor brings to the attention of the ANC any complaint about the volume of music emanating from the restaurant, Applicant shall, after notice from the ANC, (a) meet with the complaining party and/or a Commissioner to evaluate the complaint, (b) take appropriate steps to correct the problem, and (c) appear at the next scheduled ANC meeting and address the complaint and report on the steps it has taken to remedy the problem.

9. Applicant shall not install or utilize any juke boxes or video games. Applicant may install or utilize a cigarette vending machine in the vicinity of the rest room area.

10. Smoking shall only be permitted in the bar/lounge area.

11. Applicant shall be prohibited from displaying any banners, neon signs or outside signage.

12. Applicant shall comply with all aspects of the Civil Infractions Act and the Litter Control Administration Act. Applicant shall keep the front and rear of its premises litter free.

13. Applicant shall not allow any delivery to be made through its main

entrance on Connecticut Avenue. Applicant shall instruct all of its vendors to deliver their products through the rear entrance.

14. Applicant shall not allow any deliveries to be made at any time before 8:00 a.m. Monday through Friday, nor prior to 9:00 a.m. Saturday and Sunday. Applicant shall instruct its vendors that their delivery personnel are prohibited from using their horn to announce their presence or arrival.

15. Applicant is aware that the alleyway behind its establishment is a narrow alleyway that is shared with other businesses and an entire apartment community. Applicant shall instruct all of its vendors, and shall itself remain vigilant to ensure, that delivery trucks shall not block any access to any other loading dock, driveway or entrance.

16. Applicant shall ensure that its trash is removed in a timely manner. In no event shall Applicant's trash receptacle be permitted to overflow outside of such receptacle. Applicant shall use its best efforts to ensure that its trash receptacle remain closed and free of vermin at all times. Applicant will not put any bottles outside after closing.

17. Applicant shall maintain its ventilating system in proper working order at all times and shall address any neighborhood concerns regarding odors.

18. An ABC licensed manager, conversant with all aspects of this Agreement shall be on site at Applicant's premises during all hours of operation during which alcoholic beverages are sold or served.

20. Any and all contemplated changes to Applicant's operation, as set forth herein or otherwise, will be brought to the attention of the ANC prior to

implementation. In accordance with the law, Applicant will give great weight to the concerns of the ANC.

21. In consideration of, and in reliance upon, the commitments reflected in paragraphs 1 through 20 above, the ANC will advise the ABC Board that it does not oppose Applicant's pending application for a Retailer's Class "CR" license. *on view of the v/a we will not protest*

22. The parties further agree that any failure of Applicant to adhere to the foregoing commitments will constitute grounds for the ANC to petition the ABC Board for issuance of an order to show cause to gain the Applicant compliance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties have affixed hereunto their hands and seals on the year and day first above written.

APPLICANT, VAN NESS STATION, INC.

By: Derek Colbert

Name: Derek Colbert

Title: President

ADVISORY NEIGHBORHOOD
COMMISSION 3F

By: Christine M. Sorce

Name: Christine M. Sorce

Title: Commissioner ANC 3F01